

ORDINANCE NO. 09-3713

AN ORDINANCE OF THE CITY OF KELSO ADDING A NEW SECTION TO THE KELSO MUNICIPAL CODE TO BE ENTITLED "ILLICIT DISCHARGE – STORMWATER UTILITY," TO BE CODIFIED AS KMC 13.11, TO REGULATE THE ILLICIT DISCHARGE OF POLLUTANTS INTO THE CITY'S STORMWATER UTILITY, AS MORE PARTICULARLY DESCRIBED HEREIN.

WHEREAS, the City desires to provide for the health, safety, and general welfare of its citizens; and

WHEREAS, the City finds that pollutants are being introduced into its stormwater utility which may pose a risk to its citizens, wildlife, and the environment; and

WHEREAS, the City is required to be in compliance with the Western Washington Phase II Municipal Stormwater Permit by August 15, 2009; now, therefore,

THE CITY COUNCIL OF THE CITY OF KELSO DO ORDAIN AS FOLLOWS:

SECTION 1. That a new section entitled "Illicit Discharge – Stormwater Utility" is hereby added to the Kelso Municipal Code, to be codified as KMC 13.11, which shall provide as follows:

**CHAPTER 13.11
ILLICIT DISCHARGE – STORMWATER UTILITY**

Sections:

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13.11.010 Purpose/Intent.

The purpose of this Chapter is to provide for the health, safety, and general welfare of the citizens of the City of Kelso, and provide protection for wildlife and the environment, through the regulation of illicit discharges to the storm drainage system to the maximum extent practicable as required by federal and state law. This Chapter establishes methods for controlling the introduction of pollutants into the municipal separate storm sewer system (storm drainage system) in order to comply with requirements of the Western Washington Phase II Municipal Stormwater Permit process. The objectives of this Chapter are:

- (1) To regulate the contribution of pollutants to the stormwater drainage system by stormwater discharges
- (2) To prohibit illicit connections and discharges to the stormwater drainage system
- (3) To establish legal authority to carry out all inspection, surveillance and monitoring procedures necessary to ensure compliance with this Chapter

13.11.020 Definitions.

For the purposes of this Chapter, the following definitions shall mean:

Best Management Practices (BMPs). The schedules of activities, prohibitions of practices, general good housekeeping practices, pollution prevention and educational practices, maintenance procedures, and other structural or managerial practices that, when used singly or in combination, prevent or reduce the release of pollutants and other adverse impacts to waters of Washington State or the stormwater drainage system. BMPs also include treatment practices, operating procedures, and practices to control site runoff, spillage or leaks, sludge or water disposal, or drainage from raw materials storage.

City. The City of Kelso.

Clean Water Act. (CWA) The federal Water Pollution Control Act (33 U.S.C. § 1251 et seq.), and any subsequent amendments thereto.

CFR. Code of Federal Regulations.

Construction Activity. Activities subject to NPDES Construction Permits. These include construction projects resulting in land disturbance of one acre or more. Such activities include but are not limited to clearing and grubbing, grading, excavating, and demolition.

Director. The Director of the City of Kelso Public Works Department or his/her designee.

Hazardous Materials. Any material, including any substance, waste, or combination thereof, which because of its quantity, concentration, or physical, chemical, or infectious

characteristics may cause, or significantly contribute to, a substantial present or potential hazard to human health, safety, property, or the environment when improperly treated, stored, transported, disposed of, or otherwise managed.

Hyperchlorinated water. The water that contains more than 10 milligrams per Liter chlorine.

Illicit Discharge. Any direct or indirect discharge to the stormwater drainage system that is not composed entirely of stormwater except discharges expressly exempted in Section 13.11.050.

Illicit Connections. Any man-made conveyance that is connected to the storm drainage system without a permit. Examples include sanitary sewer connections, floor drains, channels, pipelines, conduits, inlets, or outlets that are connected directly to the stormwater drainage system.

Industrial Activity. The activities subject to NPDES Industrial Permits as defined in 40 CFR, Section 122.26 (b)(14).

KMC. The Kelso Municipal Code.

Maximum Extent Practicable (MEP). MEP refers to paragraph 402(p)(3)(B)(iii) of the federal Clean Water Act which reads as follows: Permits for discharges from municipal storm sewers shall require controls to reduce the discharge of pollutants to the maximum extent practicable, including management practices, control techniques, and system, design, and engineering methods, and other such provisions as the Administrator or the State determines appropriate for the control of such pollutants.

Municipal Separate Storm Sewer System (MS4). A conveyance, or system of conveyances (including roads with drainage systems, municipal streets, catch basins, curbs, gutters, ditches, manmade channels, or storm drains):

- (1) owned or operated by a state, city, town, borough, county, parish, district, association, or other public body (created by or pursuant to State Law) having jurisdiction over disposal of wastes, stormwater, or other wastes, including special districts under State law such as a sewer district, flood control district or drainage district, or similar entity, or an Indian tribe or an authorized Indian tribal organization, or a designated and approved management agency under Section 208 of the CWA that discharges to waters of the United States.
- (2) designed or used for collecting or conveying stormwater.
- (3) which is not a combined sewer; and
- (4) which is not part of a Publicly Owned Treatment Works as defined at 40 CFR 122.2.

National Pollutant Discharge Elimination System (NPDES). The national program for issuing, modifying, revoking, and reissuing, terminating, monitoring and enforcing permits, and imposing and enforcing pretreatment requirements, under Sections 307, 402, 318, and 405 of the Federal Clean Water Act, for the discharge of pollutants to surface waters of the state from point sources. These permits are referred to as NPDES permits and, in Washington State, are administered by the Washington Department of Ecology.

Non-Stormwater Discharge. Any discharge to the storm drainage system that is not stormwater. Examples may include but are not limited to sanitary wastewater, laundry wastewater, noncontact cooling water, vehicle wash wastewater, radiator flushing wastewater, spills from roadway accidents, and improperly disposed motor oil, solvents, lubricants, and paints.

Owner. Any individual, association, organization, partnership, firm, corporation or other entity recognized by law who is (1) the owner of the Premises or the owner's agent, or (2) in control of the Premises, or (3) the owner of any facility causing the illicit discharge, or the owner's agent, or (4) in control of any facility causing the illicit discharge.

Pollutant. Anything which causes or contributes to pollution. Pollutants may include, but are not limited to: paints, varnishes, and solvents; oil and other automotive fluids; yard wastes, refuse, garbage, litter, or other discarded or abandoned objects and accumulations; pesticides, herbicides, and fertilizers; hazardous substances and wastes; sewage, fecal coliform, animal wastes and pathogens; dissolved and particulate metals; and noxious or offensive matter of any kind.

Premises. Any building, lot, parcel of land, or portion of land whether improved or unimproved including adjacent sidewalks and parking strips.

RCW. The Revised Code of Washington.

Stormwater Drainage System. See the definition for Municipal Separate Storm Sewer System.

Stormwater. Runoff during and following precipitation and snowmelt events, including surface runoff and drainage.

Stormwater facility (facility). A constructed component of a stormwater drainage system designed or constructed to perform a particular function, or multiple functions. Stormwater facilities include but are not limited to pipes, swales, ditches, culverts, street gutters, detention ponds, retention ponds, constructed wetlands, infiltration devices, catch basins, oil/water separators, and biofiltration swales.

Stormwater Pollution Prevention Plan (SWPPP). A written plan to implement Best Management Practices to identify, prevent, and control the contamination of stormwater discharges to stormwater, stormwater drainage systems and/or receiving waters to the maximum extent practicable.

Water body. Lakes, rivers, ponds, streams, inland waters, sloughs, ditches, and all other surface waters and watercourses within the jurisdiction of the state of Washington.

Western Washington Phase II Municipal Stormwater Permit (Permit). A permit issued by the Washington Department of Ecology under Sections 307, 402, 318, and 405 of the Federal Clean Water Act that authorizes the discharge of pollutants to surface waters of the state. Also known as an NPDES permit.

Any term not defined herein shall be given its normal definition subject to guidance by definitions in the NPDES Phase II Permit, as well as federal, state and local codes.

13.11.030 Applicability.

This Chapter shall apply to all owners responsible for and/or otherwise causing water directly or indirectly entering the storm drain stormwater drainage system generated on any developed and undeveloped lands unless explicitly exempted herein.

13.11.040 Responsibility for Administration.

The Director shall administer, implement, and enforce the provisions of this Chapter.

13.11.050 Discharge Prohibitions.

A. Prohibition of Illicit Discharges. No owner or individual shall throw, drain, or otherwise discharge, cause or allow others under its control to throw, drain, or discharge into the storm drain system and/or surface or ground waters any material other than stormwater or allowable non-stormwater discharges. All illicit discharges, as defined in this Chapter, constitute a violation of this Chapter.

(1) Exempt Non-Stormwater Discharges. The following categories of non-stormwater

discharges are allowed, unless they are identified as a significant source of pollution:

- a. Diverted stream flows.
- b. Rising ground waters.
- c. Uncontaminated ground water infiltration (as defined at 40 CFR 35.2005(20)).
- d. Uncontaminated pumped ground water.
- e. Foundation drains.
- f. Air conditioning condensation.
- g. Irrigation water from agricultural sources that is commingled with urban stormwater.
- h. Springs.
- i. Water from crawl space pumps.
- j. Footing drains.
- k. Flows from riparian habitats and wetlands.
- l. Non-stormwater discharges covered by another NPDES permit.
- m. Discharges from emergency fire fighting activities.

(2) Conditional Discharges. The following categories of non-stormwater discharges are allowed if the conditions stated in this Section are met unless they are identified by the City as a significant source of pollution. Failure to comply with the conditions shall constitute a violation of this Chapter.

- a. Discharges from potable water sources, including water line flushing, hyperchlorinated water line flushing, fire hydrant system flushing, and pipeline hydrostatic test water. Planned discharges shall be de-chlorinated to a concentration of 0.1 ppm or less, pH-adjusted, if necessary, and volumetrically and velocity controlled to prevent re-suspension of sediments in the stormwater drainage system.
- b. Discharges from swimming pools, hot tubs and similar discharges. These discharges shall be dechlorinated to a concentration of 0.1 ppm or less, pH-adjusted and reoxygenized if necessary, volumetrically and velocity controlled to prevent re-suspension of sediments in the stormwater drainage system. Swimming pool cleaning wastewater and filter backwash shall not be discharged to the stormwater drainage system.
- c. Non-stormwater discharges covered by another NPDES permit, provided, that the discharger is in compliance with that permit, waiver, or order and other applicable laws and regulations; and granted that written approval has been granted for discharge to the stormwater drainage system.
- d. Other non-stormwater discharges. The discharges shall be in compliance with the

requirements of a stormwater pollution prevention plan (SWPPP) reviewed by the City, which addresses control of such discharge by applying all known and reasonable methods of prevention control and treatment (AKART) to prevent contaminants from entering surface and groundwater.

e. Discharges specified in writing by the Director as being necessary to protect public health and safety.

e. Dye testing is an allowable discharge, but requires a verbal notification to the Director prior to the time of the test.

(3) Other Conditional Discharges. The following shall be addressed through public education and water conservation efforts to prevent illicit discharge:

a. Discharges from lawn watering and other irrigation runoff are permitted but shall be minimized.

b. Street and sidewalk wash water, water used to control dust, and routine external building wash down that does not use detergents are permitted if the amount of water used is minimized. At active construction sites, street sweeping must be performed prior to washing the street.

B. Prohibition of Illicit Connections. The construction, use, maintenance or continued existence of illicit connections to the stormwater drainage system, including but not limited to any sewage connection, is prohibited and constitutes a violation of this Chapter. This prohibition expressly includes, without limitation, illicit connections made in the past, regardless of whether the connection was permissible under law or practices applicable or prevailing at the time of connection.

13.11.060 Industrial or Construction Activity Discharges.

A. Any owner subject to an industrial or construction activity NPDES stormwater discharge permit shall comply with all provisions of such permit. Proof of compliance with said permit may be required in a form acceptable to the City prior to the allowing of discharges to the stormwater drainage system.

B. Access to Facilities

- (1) If an owner has security measures in force which require proper identification and clearance before entry into its premises, the discharger shall make the necessary arrangements to allow access to representatives of the City.
- (2) Owners shall allow the City ready access to all parts of the premises for the purposes of inspection, sampling, examination and copying of records that must be kept under the conditions of an NPDES permit to discharge stormwater, and the performance of any additional duties as defined by local, state and/or federal law.
- (3) The City shall have the right to set up on any facility such devices as are necessary in the opinion of the City to conduct monitoring and/or sampling of the facility's stormwater discharge.
- (4) The City has the right to require the discharger to install monitoring equipment as

necessary. The facility's sampling and monitoring equipment shall be maintained at all times in a safe and proper operating condition by the discharger at their own expense. All devices used to measure stormwater flow and quality shall be calibrated to ensure their accuracy.

- (5) Any temporary or permanent obstruction to safe and easy access to the facility to be inspected and/or sampled shall be promptly removed by the operator at the written or oral request of the City and shall not be replaced. The costs of clearing such access shall be borne by the operator.

Any unreasonable delays in allowing the City access to a facility is a violation of this Chapter.

13.11.070 Inspection and Sampling.

A. The Director is authorized to develop inspection procedures and requirements for all stormwater drainage systems in the City.

B. Inspection Procedure. Prior to entry of the premises for the purpose of making any inspections, sampling, or records examination, the City shall obtain permission to enter the premises as follows:

- (1) Director shall present identification credentials, state the reason for the inspection and request entry of the owner, if available.
- (2) Unoccupied Building. If the premises or any building or structure on the premises is unoccupied, the Director shall make reasonable efforts to locate the owner and request entry. In the event of an imminent hazard to persons or property as set forth in KMC 13.11.070(B)(3) below, such reasonable efforts shall be satisfied by attempting to contact the owner on site and by telephone at the last known number.
- (3) Imminent Hazard. If, after reasonable efforts, the Director is unable to locate the owner, and has reason to believe the condition of the premises or of the private stormwater drainage system creates an imminent hazard to persons or property, the Director may enter to abate the danger.

C. Inspection Parameters. Inspections for compliance with the provisions of this Chapter shall be allowed as follows:

- (1) Construction and Development Inspection. A City representative or authorized designee shall have the right of entry to access to any premises for which a permit requiring erosion controls or a stormwater facility has been issued, during regular business hours, or when reasonable under the circumstances for the purpose of review of erosion control practices and private stormwater drainage systems, and to ensure compliance with the terms of such permit. Applicants for any such permit shall agree in writing, as a condition of permit issuance, that such access shall be permitted for such purposes. Inspection procedures shall be as outlined in this Section and KMC 13.11.070.
- (2) Inspection for Cause. Whenever the City has cause to believe that a violation of any provision of this Chapter has been or is being committed, the Director, following procedures prescribed in this Section, is authorized to enter the premises to inspect the premises during regular business hours, or when reasonable in the circumstances to ensure compliance with this Chapter and Chapter 13.09. Level of cause includes, but is not limited to, a citizen notification or an observation by a City employee.
- (3) Inspection for Maintenance and Source Control Best Management Practices. The Director, , following procedures prescribed in this Section, is authorized to enter the

premises to inspect private stormwater drainage systems during regular business hours, or at any other time reasonable under the circumstances, in order to ensure continued functioning of the facilities for the purposes for which they were constructed, and to ensure that maintenance is being performed in accordance with the standards of this Chapter, Chapter 13.09, and any maintenance schedule adopted during the plan review process for the premises. The Director also may enter the premises for the purposes of observing source control BMPs.

D. Water Sampling and Analysis. Water sampling and analysis for determination of compliance with this Chapter shall be allowed as follows:

- (1) Sample Collection. When the City has reason to believe that a violation exists or is occurring on a premises, the Director is authorized to enter the property to set up on the premises such devices as are necessary to conduct sampling, inspection, compliance monitoring, or flow measuring operations.
- (2) Sample Analysis. Analysis of samples collected during investigation of potential violations shall be analyzed by a laboratory certified by the Department of Ecology as competent to perform the required analysis using standard practices and procedures.
- (3) Cost of Sample Collection and Analysis. If it is determined that a violation of this Chapter exists on the premises, the owner shall pay the City's actual costs for collecting samples and for laboratory analysis of those samples. If it is found that a violation does not exist, the City will pay such charges.

E. If the City has been refused access to any part of the premises from which stormwater is discharged, and he/she is able to demonstrate probable cause to believe that there may be a violation of this Chapter, or that there is a need to inspect and/or sample as part of a routine inspection and sampling program designed to verify compliance with this Chapter or any order issued hereunder, or to protect the overall public health, safety, and welfare of the community, then the City may seek issuance of a search warrant from any court of competent jurisdiction.

13.11.080 Requirement to Prevent, Control, and Reduce Stormwater Pollutants by the use of Best Management Practices.

The owner or operator of a commercial or industrial establishment shall provide, at their own expense, reasonable protection from spill or loss of prohibited materials or other wastes into the stormwater drainage system or watercourses through the use of structural and non-structural BMPs. The design and selection of BMPs shall be from the 2005 Western Washington Stormwater Management Manual or BMPs with City approval. Further, any owner responsible for a premises, which is, or may be, the source of an illicit discharge, may be required to implement, at said owner's expense, additional structural and non-structural BMPs to prevent the further discharge of pollutants to the stormwater drainage system. Compliance with all terms and conditions of a valid NPDES permit authorizing the discharge of stormwater associated with industrial activity, to the maximum extent practicable, shall be deemed in compliance with the provisions of this Section. These BMPs shall be part of a stormwater pollution prevention plan (SWPPP) as necessary for compliance with requirements of the NPDES permit.

13.11.090 Protection of Facilities and Watercourses.

A. Protection. It is a violation for any owner to break, block, damage, destroy, uncover, deface or tamper with any watercourse, stormwater facility, or erosion control system.

B. Responsibility. Every owner, upon whose property exists a water body shall keep and maintain that part of the water body within the property free of trash, debris, and other obstacles that would pollute, contaminate, or significantly retard the flow of water into or through the water body. In addition, the owner or lessee shall maintain existing privately owned structures within or adjacent to a water body, so that such structures will not become a hazard to the use, function, or physical integrity of the water body.

13.11.100 Notification of Spills.

A. Reporting. Notwithstanding other requirements of law, as soon as any owner who has information of any known or suspected spill, deposition, discharge, or other loss of materials which are resulting or may result in illicit discharges or pollutants discharging to stormwater shall notify the City.

B. Response. Notwithstanding other requirements of law, as soon as any owner responsible for a premises or operation, or responsible for emergency response for a premises or operation, shall immediately take all necessary steps to ensure the discovery, containment, and full cleanup of water pollutants or potential pollutants is performed and to the satisfaction of the City and/or Ecology. In the event of such a release of hazardous materials said owner shall immediately notify emergency response agencies of the occurrence via emergency dispatch services. If the discharge of prohibited materials emanates from a commercial or industrial establishment, the owner or operator of such establishment shall also retain an on-site written record of the discharge and the actions taken to prevent its recurrence. Such records shall be retained for at least five (5) years.

13.11.110 Enforcement.

A. Order of Enforcement. The order of escalating enforcement procedures and actions will begin with education to issuance of a Notice and Order of Compliance for civil penalties and then to criminal prosecution. Criminal prosecution for first time violators will be limited to incidents of intentional acts or gross negligence where the acts or negligence has caused significant damage or risk to the public health or water quality.

B. Notice and Order of Compliance. Whenever the City finds that an owner has violated a prohibition or failed to meet a requirement of this Chapter, the Director may issue a Notice and Order of Compliance to correct the violation and take such action as may be necessary to assure compliance with this Chapter. The Order shall specify the actions to be taken and the time for compliance. The Order may be appealed in accordance with the provisions of this KMC 13.11.120.

C. Form of Notice and Order of Compliance.

(1) The written Notice and Order of Compliance to the owner shall contain:

a. The street address or legal description sufficient for identification of the premises

upon which the illicit discharge is located.

b. A brief and concise description or picture of the violation, together with a citation to the ordinance provision which the illicit discharge violates.

c. A demand that the illicit discharge be abated or restored in accordance with the local, state, and federal laws.

d. A statements advising the party issued the citation that they may appeal the order to the City's hearings examiner upon payment of the appropriate appeal fee and that such an appeal shall be served upon the Public Works Department.

e. If abatement of a violation and/or restoration of affected property is required, the notice shall set forth a deadline within which such remediation or restoration must be completed. Said notice shall further advise that, should the owner fail to remediate or restore within the established deadline, the work may be done by the City or an authorized agent, and the expense thereof shall be charged to the owner.

(2) Such Notice and Order of Compliance may require without limitation:

a. The elimination of illicit discharges or practices, or operations that violate this Chapter;

b. The elimination of illicit connections or discharges;

c. The abatement or remediation of stormwater pollution or contamination hazards and the restoration of any affected property;

d. The performance of monitoring, analyses, and reporting of stormwater facilities or non-stormwater discharges;

e. Payment of a fine to cover administrative and remediation costs; and

f. Payment of penalties in an amount not to exceed \$500 per day per violation.

g. The implementation of source control or treatment BMPs.

(3) Service of Notice and Order of Compliance. The Notice and Order of Compliance shall be served upon the last known address of the owner of the property where the illicit discharge exists.

(4) Method of service. Service of the Notice and Order of Compliance shall be made upon all owners entitled thereto pursuant to Civil Court Rules and Chapter 4.28 RCW. Service by mail shall be deemed effective on the date of mailing.

(5) Proof of service. Proof of service of the Notice and Order of Compliance shall be certified to at the time of service by a written declaration under the penalty or perjury as authorized by the laws of the state of Washington, or by a showing of mailing via certified mail.

D. Suspension of Stormwater Drainage System Access

- (1) Suspension due to Illicit Discharges in Emergency Situations. The City may, without prior notice, issue a suspension order to suspend all access to the stormwater drainage system to an owner when such suspension is necessary to stop an actual or threatened discharge which presents or may present imminent and substantial danger to the environment, or to the health or welfare of persons, or to the stormwater drainage system or waters of the state. It shall be unlawful for any owner to fail to comply with an emergency suspension order. If any owner fails to immediately comply with a suspension order issued in an emergency, the City may take such steps as deemed necessary to prevent or minimize danger and damage to the environment, public safety, the stormwater drainage system or waters of the state. The owner who has failed to comply with the order shall be responsible for all costs incurred by the City in abating the conditions which caused the issuance of the order.
- (2) Suspension due to the Detection of Illicit Discharge. The City may, upon written notice, issue a suspension order to suspend all access to the stormwater drainage system to an owner discharging to the stormwater drainage system in violation of this Chapter if such termination would abate or reduce an illicit discharge. The Director will notify a violator of the proposed termination of its stormwater drainage system access.
- (3) Reinstatement of Access. The reinstatement of a connection which has been terminated pursuant to this Section, without the prior approval of the Director shall constitute a violation of this Chapter.
- (4) A suspension order issued under this Section may be appealed to the City's hearings examiner in accordance with KMC 13.11.120. An appeal shall not relieve any owner of the obligation to comply with an emergency suspension order.

E. Residential and Charity Car Washing. The City will take a public education approach to compliance for individual residential and charity car washing. These discharges shall be minimized through, at a minimum, water conservation efforts and public education activities that encourage use of commercial carwashes, redirection of washwaters to a sanitary sewer or to pervious surfaces such as grass or gravel, and the use of phosphate-free soap.

13.11.120 Appeal of Notice and Order of Compliance or Suspension Order.

A. Any owner receiving a Notice and Order of Compliance or Suspension Order may appeal the determination of the City to the City's hearings examiner. The notice of appeal must be received within 10 days from receipt of the Notice and Order of Compliance or Suspension Order. A copy of the appeal must be served on the Public Works Department. Hearing on the appeal shall take place within 30 days from the date of receipt of the notice of appeal. The decision of the hearings examiner shall be the final decision of the City. Any appeal shall be processed in accordance with the provisions of this Chapter, KMC 2.14, and the appeal provisions of KMC 8.24. In the event of a conflict, the provisions of this Chapter shall govern.

B. The notice of appeal shall include the following:

- (1) The heading in the words of "Before the Hearings Examiner of the City of Kelso."
- (2) A caption reading "Appeal of the Illicit Discharge at (address or legal description)."

- (3) A brief statement setting forth the legal interest of each of the appellants in the building or the land involved in the notice.
- (4) A brief statement in ordinary and concise language of the relief sought and the reasons why it is claimed the protested order or action should be reversed.
- (5) The signatures of all appellants named, together with their addresses and telephone numbers. Signatures affixed to this appeal document shall constitute a verification that the appeal is made in good faith and not merely an effort to delay, harass, or annoy in any way that is frivolous or without merit.

C. The notice of appeal shall be accompanied by the payment of an appeal fee in an amount set by the City Council by separate ordinance.

13.11.130 Failure to Appeal.

Failure of any owner to file an appeal in accordance with the provisions herein shall constitute a waiver of the right to an administrative hearing and adjudication of the notice and order or any portion thereof; said failure shall not be deemed an exhaustion of administrative remedies.

13.11.140 Method and Form of Appeal Decision.

A. Form of Appeal Decision. The decision shall be in writing and shall contain findings of fact, a determination of the issues presented, and the requirements to for compliance therewith. A copy of the decision shall be delivered to the appellant personally or sent by certified mail, postage prepaid, return receipt requested. The decision shall be a matter of public record.

B. Effective Date of Decision. The effective date of the decision shall be as stated therein.

13.11.150 Enforcement Measures After Appeal.

If the violation has not been corrected pursuant to the requirements set forth in the Notice and Order of Compliance Order, or in the event of an appeal, within 21 days of the decision of the hearings examiner, then the City may enter the premises and are authorized to take any and all measures necessary to abate the violation and/or restore the premises. Right of entry shall be obtained in the manner set forth for inspection procedures at KMC 13.11.070.

13.11.160 Cost of Abatement of the Violation.

Upon the City's abatement of the violation, the City will notify of the owner of the cost of abatement, including administrative costs. The owner may file a written protest objecting to the amount of the assessment within 15 days. If the amount due is not paid within a timely manner as determined by the City, the charges shall become a special assessment against the premises and shall be grounds for the City to file a lien on the premises for the amount of the assessment.

13.11.170 Injunctive Relief.

It shall be unlawful for any owner to violate any provision or fail to comply with any of the requirements of this Chapter. If a owner has violated or continues to violate the provisions of this Chapter, the City may petition for a preliminary or permanent injunction restraining the owner

from activities which would create further violations or compelling the owner to perform abatement or remediation of the violation.

13.11.180 Compensatory Action.

In lieu of enforcement proceedings, penalties, and remedies authorized by this Chapter, the City may impose upon a violator alternative compensatory actions. Examples of these activities include, but are not limited to, attendance at compliance or training workshops, river, stream, or creek cleanup activities, or other community service activities.

13.11.190 Violations Deemed a Public Nuisance.

In addition to the enforcement processes and penalties provided, any condition caused or permitted to exist in violation of any of the provisions of this Chapter that is a threat to public health, safety, and welfare, and is declared and deemed a nuisance may be subject to abatement as provided by applicable laws of the City or the State of Washington.

13.11.200 Criminal Prosecution.

Any owner that has violated or continues to violate this Chapter shall be liable to criminal prosecution to the fullest extent of the law, and shall be subject to a misdemeanor criminal penalty of \$1,900 dollars per violation per day and/or imprisonment for a period of time not to exceed 90 days, or as hereinafter amended.

13.11.210 Remedies not Exclusive.

The remedies listed in this Chapter are not exclusive of any other remedies available under any applicable federal, state or local law.

13.11.220 Severability.

A. The provisions of this Chapter are hereby declared to be severable. If any provision, clause, sentence, or paragraph of this Chapter or the application thereof to any owner, establishment, or circumstances shall be held invalid, such invalidity shall not affect the other provisions or application of this Chapter.

B. If this Chapter is in conflict with any other section of the Kelso Municipal code, this Section shall control.


SECTION 2. This Ordinance shall be in full force and effect 5 days after its passage and publication of summary as required by law.

ADOPTED by the City Council and **SIGNED** by the Mayor this 18th day of August, 2009.



MAYOR

ATTEST/AUTHENTICATION:



Deputy CITY CLERK

APPROVED AS TO FORM:



CITY ATTORNEY

PUBLISHED: 8/22/09